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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. STEVEN DYLAN BELMONT, Defendant and Appellant.	A144613 (Napa County Super. Ct. No. CR167189)

Defendant Steven Dylan Belmont appeals a judgment entered upon a jury verdict finding him guilty of mayhem (Pen. Code, § 203),[1] two counts of assault with a deadly weapon (§ 245, subd. (a)(1)), and battery with serious bodily injury (§ 243, subd. (d)). He contends the trial court did not instruct the jury correctly on self-defense—giving three instructions it should not have—and that his mayhem conviction was improper because the jury found the prosecution did not prove one of the elements of that crime and the court did not instruct the jury fully on that element. We shall affirm the judgment.

[1] All statutory references are to the Penal Code.

I. BACKGROUND

A. Prosecution Case

Roy and Jennifer Powell[2] lived in the Lake Berryessa area of Napa County with their two daughters. The house next door to them was used as a rental property.

On August 13, 2013, a group of family and friends gathered at the rental house to celebrate the birthday of Timothy Anderson. The group included defendant, who was Timothy's cousin.

Around 6:00 that evening, Jennifer noticed that there was a new group of people in the rental property, and that they were having a party and being very loud. The Powell family had dinner, and Roy drank about six light beers during the evening. According to Jennifer, he was not intoxicated. When the girls were going to bed at about 8:00 p.m., they complained about the noise coming from the house next door. An hour later, they told Jennifer the noise was keeping them awake. Jennifer and Roy approached the rental house with the girls and asked the residents to quiet down so the children could sleep. There were six or eight people on the second-story balcony of the rental house, ranging in age from their sixties to about four years old; one of the people told the Powell family to be quiet, called Jennifer a "fat bitch," told them to go back inside, and said there were two armed police officers in the rental house.

Roy began to get angry and told the residents of the rental house they were being disruptive and should be quiet. Defendant and another man came down from the balcony and exchanged words with Roy. Defendant picked up a brick paver stone, held it up to Roy's head, and said, "I'm going to smash your skull in," and "I'm going to kill you." Roy began to curse and yell at the group. Jennifer called 911 and went inside her house with the children, while Roy stayed outside.

William Giesker, a friend of the Powell family, was spending the evening with another friend, Rich LaBarge, and their families. Roy called Giesker at about 9:28 p.m., told him he was having an incident with the renters next door, and asked Giesker to come

[2] Because several of the people involved in this case share last names, we will refer to some of them by their first names. We intend no disrespect.

to the house. Giesker and LaBarge drove to the Powells' house. When they arrived, Roy was screaming and yelling at the rental house. Giesker waved his hands and tried to get the attention of the people on the house's balcony to find out what was going on. One of the people on the deck pointed into the rental house and said, "He had too much to drink," and pointed to Roy and said Roy had also had too much to drink. Someone from inside the house said there were two armed off-duty police officers in the house. LaBarge and Giesker said, "[W]ell, can they come down and talk to us?"

Defendant and Timothy Anderson ran out of the rental house. Defendant had a pitchfork in his hand, holding it with the tines forward. As he got closer to Roy, defendant said, "[C]ome on, mother fucker. You want some? I'll kill you. You want some? You want some of this? I'll kill you," and "Back the fuck up." He was holding the pitchfork in both hands across his chest, the tines pointed at an angle. Giesker testified Roy "was kind of like walking up, you know, how two people square off in a fight, trying to back up, and I don't know if his hands were coming up or not." Defendant jabbed at Roy with the pitchfork, the tines pointing toward Roy, swung the pitchfork forward, and cracked him on the side of the head. Giesker heard a loud crack, and Roy fell backward, unconscious.

LaBarge, on the other hand, testified that Roy did not raise his hands as defendant approached him with the pitchfork, as Roy stood in the street; that there was no struggle; and that defendant "just cocked back and swung and hit Roy in the head."

Defendant turned to Giesker and approached him, pointing the pitchfork's tines toward him and saying, "[Y]ou want some too, mother fucker? . . . I'll kill you too, mother fucker." Giesker backed away toward Roy's garage and defendant followed, yelling and making jabbing motions toward Giesker's throat and midsection with the pitchfork. Giesker went into the garage, and defendant turned the pitchfork toward LaBarge and began moving toward him. Giesker reached back and found an axe in the garage; he picked it up and told defendant, "[I]f you stab my friend I'll take your head off." Giesker reached for his phone to call 911, and defendant turned and "took off."

Roy suffered a laceration to his ear, which damaged both skin and cartilage and extended all the way through the ear, front to back, requiring ten sutures; two lacerations to his forearm, which required three sutures; a swollen left eye; and traumatic brain injury. He had fractures to his maxilla, orbit, and temporal bones. He required a ventilator at the hospital. He was in the intensive care unit and remained at a hospital until August 26, 2013, when he was transferred to a rehabilitation center. He slurred his words and was confused and restless when he entered the rehabilitation center. He had difficulty expressing himself and understanding language, and his balance was impaired. He was discharged on September 10, 2013.

At trial, Roy testified that he still had numbness in his head and that he had lost his senses of smell and taste. He was unable to work regularly for approximately a year after the incident. He had no memory of the events.

B. The Defense

The theory of the defense was that Roy threatened the lives of the group at the rental house and then approached the house aggressively with Giesker and LaBarge, and that defendant used the pitchfork to defend himself and the others.

As the group gathered and ate dinner outside, Roy came over and began yelling, saying things like, "Shut the fuck up," and "My children are trying to go to sleep." After an exchange of insults, he yelled, "If y'all don't shut the fuck up, you're going to have some crazy ass rednecks running through your house," "[y]ou don't know who you're fucking with, you're fucking with Napa," and "I'll have you killed."[3] He and Jennifer screamed obscenities at the group in the rental house and told them they were not supposed to rent the house, members of the rental group yelled back, and Timothy said he was a police officer.

[3] The defense witnesses gave varying accounts of when Roy or Jennifer said words to the effect of "You don't know who you're fucking with," and "You're messing with Napa."

Timothy and his mother, Mary Anderson, went down to the retaining wall between the two properties to try to defuse the situation. Defendant did not go with them. Mary apologized and Timothy said words to the effect of, "I'm a sworn peace officer, we can work this out." Roy called Mary by an obscene name and said he would have her killed. His demeanor was aggressive. Another resident of the rental house recalled Roy saying at some point, "You don't know who you're fuckin' messing with. I have a gun." Roy appeared to be intoxicated. At that point, defendant thought Roy was a "drunk jerk" who was making "hollow threats."

Timothy and Mary returned to the house and closed the door. Timothy saw defendant come in from the balcony, appearing frightened and panicky, saying "they" were coming up the driveway. Other residents of the rental house also testified that they felt threatened and feared that Roy would break into the house.

Defendant and Timothy went outside, and Timothy saw Roy and two other large men in the driveway and yard. He told them to get off the property, and they challenged him to fight. The men began "flanking" Timothy, their fists clenched. As defendant approached, the three men began to retreat. Timothy and defendant pursued them, defendant holding a pitchfork in front of him, diagonally across his body, and saying, "Get back. Get back. Get off of our property." Roy grabbed the pitchfork and struggled with defendant for control of it. Defendant broke the pitchfork free, and as he followed through with the original movement, the tines of the pitchfork struck Roy's face. Roy fell to the ground, apparently unconscious.

Defendant testified in his own defense. He was inside the house serving dinner, when he heard someone say there were people coming. He went outside and saw two men coming up the driveway toward the front door. Because of Roy's threats to "run[] through [the] house like a crazy redneck," defendant was frightened and was determined not to allow them into the house. He opened the garage door to find something to get the men off the property and saw a pitchfork. He grabbed the pitchfork and went outside, using it as a barrier. Defendant saw Timothy surrounded by a group of men, and he approached and yelled for the men to get off the property. Roy shouted in an aggressive,

challenging manner, "What are you gonna do with that?" The men backed up, still facing defendant; it appeared to him they were looking for an opportunity to attack. Defendant walked them to the end of the driveway, still yelling. He was frightened. He did not try to poke anyone with the pitchfork. Roy grabbed the pitchfork in the middle and tried to wrest it from defendant's hands. Defendant thought Roy was going to take it and stab him. As they struggled for control of the pitchfork, defendant pushed forward and hit Roy with it. Defendant turned and saw Giesker and LaBarge running toward him and Timothy, and he told them to get back.

A blood sample taken from Roy at 11:40 p.m. on the night of the incident showed an elevated blood alcohol level of 0.132 percent. A defense expert calculated that at 9:30 p.m., he would have had a blood alcohol level of 0.16 to 0.18 percent. A man of defendant's weight who started drinking at approximately 4:00 p.m. and had dinner in the interim would have had to drink between 14 and 16 cans of light beer to achieve that blood alcohol content.

C. The Verdicts

The jury found defendant guilty of mayhem (§ 203; count 3). In connection with the mayhem count, it found not true both an enhancement allegation that he personally inflicted great bodily injury upon Roy, causing him to become comatose due to brain injury (§ 12022.7, subd. (b)) and a lesser included special allegation that he inflicted great bodily injury on Roy (§ 12022.7. subd. (a)), and true an allegation that he personally used a deadly or dangerous weapon (§ 12022, subd. (b)(1)). It found him guilty of assault on Roy with a deadly weapon (§ 245, sub. (a)(1); count 4). In connection with count four, it found not true an enhancement allegation that he inflicted great bodily injury causing him to become comatose due to brain injury (§ 12022.7, subd. (b)) and found true the lesser included allegation that he inflicted great bodily injury (§ 12022.7, subd. (a)). It also found him guilty of assault on Giesker with a deadly weapon (§ 245, subd. (a)(1); count 6) and guilty of battery with serious bodily injury (§ 243, subd. (d); count 7), and found true an allegation that he personally used a deadly or dangerous weapon in connection with count seven.

The trial court imposed the lower term for the count four aggravated assault, and an additional three years for the great bodily injury enhancement (§§ 245, subd. (a)(1), 12022.7, subd. (a)). It imposed a concurrent three-year term for count six and stayed sentence on the remaining counts (§ 654). The total sentence was five years.

II. DISCUSSION

A. The Self-Defense Instructions

The trial court instructed the jury with the standard instructions regarding self-defense: CALCRIM No. 3470 (Right to Self-Defense or Defense of Another (Non-Homicide)), CALCRIM No. 3471 (Right to Self-Defense: Mutual Combat or Initial Aggressor), CALCRIM No. 3472 (Right to Self-Defense: May Not Be Contrived), and CALCIRM No. 3474 (Danger No Longer Exists or Attacker Disabled).

1. CALCRIM No. 3471

CALCRIM No. 3471, as given, over defendant's objection, informed the jury: "A person who engages in mutual combat or who starts a fight has a right to self-defense only if: one, he actually and in good faith tried to stop fighting; [two,] he indicated by word or conduct to his opponent in a way that a reasonable person would understand that he wanted to stop fighting and that he had stopped fighting; and, three, he gave his opponent a chance to stop fighting. [¶] If the defendant meets these requirements he then has a right to self-defense if he and the opponent continued to fight. A fight is *mutual combat* when it began or continued by mutual consent or agreement. That agreement may be expressly stated or implied and must occur before the claim of self defense arose." (Italics added.) The final sentence of this instruction reflects the holding of *People v. Ross* (2007) 155 Cal.App.4th 1033, 1046–1047 (*Ross*), which concluded that " 'mutual combat' consists of fighting by mutual intention or consent, as most clearly reflected in an express or implied *agreement* to fight. . . . [T]here must be evidence from which the jury could reasonably find that *both combatants actually consented or intended to fight before the claimed occasion for self-defense arose*."

Defendant contends the trial court erred in giving CALCRIM No. 3471 because there was no evidence to support a finding that he and Powell engaged in mutual combat,

that is, combat that began or continued by mutual consent or agreement before the claim of self-defense arose. Rather, he argues the evidence shows either (1) that defendant rushed out to hit Roy with the pitchfork while Roy stood in the street with his hands at his side, as LaBarge testified, or (2) that defendant used the pitchfork to try to chase Roy off the rental property, and Roy grabbed the pitchfork and was stricken as they struggled for control of it. Neither of these two scenarios, he argues, shows there was a prior agreement to engage in mutual combat.

"It is error to give an instruction which, while correctly stating a principle of law, has no application to the facts of the case." (*People v. Guiton* (1993) 4 Cal.4th 1116, 1129.) Error in giving an inapplicable instruction is one of state law subject to the *Watson* test for prejudice, under which reversal is required if it is reasonably probable the defendant would have obtained a more favorable result in the absence of the error. (*Id*. at p. 130; *People v. Watson* (1956) 46 Cal.2d 818, 836.)

We see no error in the decision to give this instruction, as there was evidence to support the theory that defendant and others decided to engage in mutual combat. Witnesses testified that defendant and Timothy ran out of the house, toward the three belligerent men advancing up the driveway. A reasonable jury could conclude that this advancing toward the danger was evidence of an implied agreement to engage in mutual combat, and that it occurred before the right to self-defense arose.

But even if the instruction is inapplicable to the facts, there was no reversible error. "[T]he jury is presumed to disregard an instruction if the jury finds the evidence does not support its application." (*People v. Frandsen* (2011) 196 Cal.App.4th 266, 278.) Here, the jury was instructed at the outset of the instructions that some of the instructions might not apply, depending what it found about the facts of the case. The instruction was part of a panoply of self-defense instructions, and there is no basis to conclude the jury was misled to believe it should apply the instruction if it did not find defendant and Roy engaged in mutual combat as defined in CALCRIM No. 3471.

Defendant's reliance on *Ross, supra,* 155 Cal.App.4th 1033, and *People v. Rogers* (1958) 164 Cal.App.2d 555 (*Rogers*), is unavailing. *Ross*, as we have explained, held

that mutual combat requires evidence that the combatants consented or intended to fight *before* the claimed occasion for self-defense arose. (*Ross*, at pp. 1046–1047.) The appellate court found reversible error where the jury was *not* properly instructed on the meaning of mutual combat and the trial court declined the jury's request for further guidance on its meaning. (*Id*. at pp. 1047, 1054–1056.) The court in *Rogers* found prejudicial error when the jury was given an inapplicable instruction that " 'the right of self-defense is not available to either of two persons who by prearrangement, or otherwise by agreement, enter into and carry on a duel or deadly mutual combat,' " unless the one claiming self-defense sought to decline further combat and so informed his adversary. (*Rogers*, at pp. 557–558.) Unlike the instructions in *Ross* and *Rogers*, the instruction given here explicitly informed the jury that the agreement to mutual combat "must occur before the claim of self defense arose." We presume the jury understood this instruction and disregarded it if the evidence did not show mutual combat.

Defendant points out that when the trial court was discussing the instructions with counsel, the prosecutor argued that CALCRIM No. 3471 was applicable because "[m]utual combat has been the thing put forth by the Defense. That there was control, a struggle, physical stuff going on," and that the court agreed to provide the instruction. He suggests that if the prosecutor and the court were confused as to the applicability of the instruction, it is likely at least one of the jurors was misled as well and voted to convict because defendant had not satisfied the withdrawal requirements of the instruction. Whether or not the prosecutor correctly enunciated the defense theory in her argument to the trial court, we presume the *jury* read and understood the instruction, which correctly states the law. (See *Ross*, *supra*, 155 Cal.App.4th at pp. 1055–1056.)

2. CALCRIM No. 3472

The trial court also instructed the jury pursuant to CALCRIM No. 3472, as follows: "A person does not have the right to self-defense if he or she provokes a fight or quarrels with the intent to create an excuse to use force." Defendant contends this instruction is incorrect under the facts of this case.

CALCRIM No. 3742 "is generally a correct statement of law, which might require modification in the rare case in which a defendant intended to provoke only a nondeadly confrontation and the victim responds with deadly force." (*People v. Eulian* (2016) 247 Cal.App.4th 1324, 1334 (*Eulian*).) This rare circumstance was found in *People v. Ramirez* (2015) 233 Cal.App.4th 940 (*Ramirez*), in which the appellate court found the instruction erroneously prevented the jury from considering a claim of self-defense where the defendants provoked a fistfight with members of a rival gang, one of the rivals responded by holding out an object that appeared to be a gun, and one of the defendants shot him. (*Id.* at pp. 944–945.) The appellate court concluded that, in these circumstances, the instruction erroneously prevented the jury from considering the defendants' claim of self-defense (*id.* at pp. 943, 953), and held that "[a] person who contrives to start a fistfight or provoke a nondeadly quarrel . . . may defend himself 'even when the defendant set in motion the chain of events that led the victim to attack the defendant.' " (*Id.* at p. 943).

Defendant argues that, under the rule of *Ramirez*, CALCRIM No. 3472 was erroneous because there was evidence he intended to provoke only a fistfight with Roy, and that Roy "escalated to deadly force" by recruiting two large men, LaBarge and Giesker, to carry out his threat to run into the rental house and kill the inhabitants. He claims that the evidence he intended only a fistfight is found in his testimony that he thought Roy was drunk and making hollow threats and in the testimony of one of Roy's neighbors that before LaBarge and Giesker arrived, she told Roy not to fight with the renters. We are unpersuaded. The evidence shows either that defendant initiated hostilities by threatening Roy with a paver stone, or that the Powells provoked a verbal argument by shouting obscenities at the rental group. Thereafter, defendant advanced on Roy and his friends with both hands on a pitchfork, a posture that would have made a fistfight impossible. At no point does the evidence indicate defendant was trying to provoke only a fistfight, and he made no such claim at trial. Also, there is no evidence that Roy escalated the hostilities to deadly force, as the only weapon on the scene was the pitchfork defendant brought to the fight. There is simply no reason to conclude the jury

was misled into believing that, by engaging in verbal hostilities with the Powells, defendant lost his right to self-defense. The rule of *Ramirez* is inapplicable to this case.

3. Instructions on Motive and Intent

Defendant contends the trial court gave the jury conflicting instructions on the prosecution's burden to prove motive.

The court instructed the jury that the prosecutor had to prove beyond a reasonable doubt that defendant did not act in self-defense or in defense of another. As we have explained, it also instructed the jury with CALCRIM No. 3472, which told the jury defendant did not have the right to self-defense if he "provoke[d] a fight or quarrel[] with the intent to create an excuse to use force."

Defendant argues that these instructions are inconsistent with CALCRIM No. 370, which told the jury in pertinent part: "The People are not required to prove that the defendant had a motive to commit any of the crimes charged." That is, according to defendant, CALCRIM No. 370 wrongly informed the jury that the prosecution did not have to prove that his motive in provoking a fight or quarrel with Roy Powell was to create an excuse to use deadly force.

This argument is wholly unpersuasive. Intent and motive are not the same thing: "Motive describes the reason a person chooses to commit a crime. The reason, however, is different from a required mental state such as intent or malice." (*People v. Hillhouse* (2002) 27 Cal.4th 469, 504; accord, *People v. Wilson* (2008) 43 Cal.4th 1, 22 [no reasonable likelihood jury understood terms motive and intent to be synonymous where instructions did not use them interchangeably].) CALCRIM No. 370 applies to a defendant's motive in committing the crimes of which he was charged. CALCRIM No. 3472, on the other hand applies to a defendant's intent in provoking a fight as a pretext for a criminal use of force, *not* to the motive for committing the crimes themselves. Informing the jury that the People did not have to prove a motive for the crimes did not relieve the prosecution of the burden to prove defendant did not act in self-defense.

Defendant also contends that the multiple instructional errors he alleges constituted cumulative error. In light of the conclusions we have reached as to his individual claims, there was no cumulative effect requiring reversal. (See *People v. Tully* (2012) 54 Cal.4th 952, 1061.)

B. Mayhem Conviction

Defendant raises two challenges to his conviction of mayhem: that it should be reversed because the jury found he did not inflict great bodily injury—an element of mayhem—in connection with the conviction; and, in the alternative, that the trial court erred in failing to instruct the jury that great bodily injury is an element of mayhem.

The crime of mayhem is committed when a person "unlawfully and maliciously deprives a human being of a member of his body, or disables, disfigures, or renders it useless, or cuts or disables the tongue, or puts out an eye, or *slits the* nose, *ear*, or lip." (§ 203, italics added.)

The connection between this crime and an enhancement for great bodily injury was considered in *People v. Pitts* (1990) 223 Cal.App.3d 1547 (*Pitts*). The issue there was whether a sentence for mayhem could properly be enhanced for inflicting great bodily injury in connection with the crime. (§ 12022.7.) The court concluded the enhancement was impermissible because great bodily injury was an element of mayhem, and section 12022.7 did not apply when great bodily injury was an element of the offense. (*Pitts*, at p. 1559; § 12022.7, subd. (g).)

In reaching that conclusion, the court rejected the People's argument that great bodily injury was not an element of mayhem because a slight cut to the tongue or an infinitesimal slit to the ear or lip could come within the definition of mayhem but not constitute a "significant or substantial physical injury" for purposes of the great bodily injury enhancement. (§ 12022.7; *Pitts*, *supra*, 223 Cal.App.3d at pp. 1559–1560.) The court reasoned: "[F]rom the early common law to modern California law, mayhem has been considered a cruel and savage crime. . . . '[N]ot every visible scarring wound can be said to constitute the felony crime of mayhem.' [Citation.] Accordingly, we find great bodily injury as defined in Penal Code section 12022.7 is an element of mayhem and the

enhancement for great bodily injury is inapplicable." (*Ibid*.) The rule of *Pitts* has been followed consistently in the intervening years. (See, e.g., *People v. Keenan* (1991) 227 Cal.App.3d 26, 36, fn. 7 ["We agree mayhem requires great bodily injury . . ."]; *People v. Hill* (1994) 23 Cal.App.4th 1566, 1575 ["Great bodily injury is unquestionably an element of mayhem; it is therefore improper to use that factor to aggravate the sentence for that offense"]; see also *People v. Brown* (2001) 91 Cal.App.4th 256, 272 ["Mayhem cannot be committed without the infliction of great bodily injury"].)

Our high court considered a related issue in *People v. Santana* (2013) 56 Cal.4th 999 (*Santana*). The question there was whether the then-current version of CALCRIM No. 801 correctly required the prosecution to prove a defendant charged with mayhem caused " 'serious bodily injury.' " (*Id*. at p. 1003.) The instruction as given also informed the jury that a serious bodily injury " 'means a serious impairment of physical condition. Such an injury may include a gunshot wound.' " (*Id*. at p. 1006, italics omitted.) The court noted that the instruction cited as its authority *Pitts*—which held that *great* bodily injury was an element of mayhem—but pointed out that "[t]here is no mention in *Pitts* or its progeny of '*serious* bodily injury' as it applies to mayhem." (*Id*. at p. 1008.) The court went on to explain that although the terms " 'serious bodily injury' " and " 'great bodily injury' " had been described as having equivalent meanings, the two terms had " 'separate and distinct statutory definitions.' " (*Ibid*.) In particular, " '[u]nlike serious bodily injury, the statutory definition of great bodily injury does not include a list of qualifying injuries . . . .' " (*Ibid*.) Thus, the court concluded, "in this context where we must consider a jury instruction's precise language, we cannot conclude that the offense of mayhem includes a serious bodily injury requirement simply based on cases holding that mayhem includes a great bodily injury component." (*Id*. at p. 1009.)

The court in *Santana* went on to reject the defendant's contention that the definition of "serious bodily injury" was required to give the jury necessary guidance: the instruction's definition of that term was drawn from the statutory definition of serious bodily injury for purposes of felony battery (§ 243, subd. (f)(4)), but that definition was

in some respects inconsistent with section 203, which defines mayhem. (*Santana, supra*, 56 Cal.4th at pp. 1009–1010.) The court concluded, "*[b]y delineating the type of injuries that will suffice for mayhem, the Legislature itself established an injury's requisite level of seriousness in section 203*, and when needed, subsequent cases have given further amplification. [Citations.] To add a serious bodily injury requirement to the specific injuries listed in section 203 is more confusing than elucidating." (*Id.* at p. 1010, italics added.)

With these authorities in mind, we consider defendant's contentions.

The jury was instructed on mayhem as follows: "To prove that the defendant is guilty of [mayhem] the People must prove that the defendant unlawfully and maliciously: one, disabled or made useless a part of someone's body and the disability was more than slight or temporary; or, two, permanently disfigured someone; or, three, slit someone's ear. [¶] Someone acts *maliciously* when he or she intentionally does a wrongful act or when he or she acts with the unlawful intent to annoy or injure someone else. A disfiguring injury may be *permanent* even if it can be repaired by medical procedures."

The jury found defendant guilty of mayhem. In connection with this count, it was asked to make findings on a great bodily injury enhancement and a lesser included enhancement. In a form entitled "Verdict Form—Special Allegation: Great Bodily Injury—Comatose/Brain Injury," the jury found not true the allegation that defendant "personally inflicted great bodily injury upon Roy Powell, causing him to become comatose due to brain injury, within the meaning of Penal Code section 12022.7(b)." The jury also considered a form entitled, "Verdict Form—Lesser Included Special Allegation to Great Bodily Injury—Comatose/Brain Injury: Great Bodily Injury," and found not true the allegation that defendant "personally inflicted great bodily injury upon Roy Powell, within the meaning of Penal Code section 12022.7(a), a lesser included special allegation to Great Bodily Injury—Comatose/Brain Injury."

Defendant argues that because the jury found the great bodily injury allegation not true, it necessarily found the People had not proved the great bodily injury element of mayhem. We reject this contention. We recognize that *Pitts* held that great bodily injury

is an element of mayhem. (*Pitts*, *supra*, 223 Cal.3d at pp. 1559–1560.) But no case holds that a jury must be instructed that to find a defendant guilty of mayhem, it must find he or she inflicted great bodily injury. Rather, the point of *Pitts* appears to be that the injuries specified in the mayhem statute inherently constitute great bodily injury. Here, the jury found defendant committed mayhem, and the record fully supports a finding that he committed one of the acts specified in the statute—slitting an ear. Defendant has made no claim—either below or on appeal—that the injury Roy suffered in having his ear slit front to back does not fall within the scope of section 203.

Even if the jury's finding that defendant's acts constituted mayhem was inconsistent with its finding that he did not inflict great bodily injury, we find no ground for reversal. "Inconsistent findings by the jury frequently result from leniency, mercy or confusion. [Citation.] Such inconsistencies in no way invalidate the jury's findings," as long as substantial evidence supports the guilty verdict. (*People v. York* (1992) 11 Cal.App.4th 1506, 1510, *People v. Lewis* (2001) 25 Cal.4th 610, 656; accord *People v. Miranda* (2011) 192 Cal.App.4th 398, 406.) This rule is equally applicable to enhancements. (*York*, at p. 1510 [no impropriety in inconsistency between finding of guilt and special finding in connection with special circumstance].[4]

We also reject defendant's alternate argument that the trial court was obligated to instruct the jury sua sponte on the great bodily injury element of mayhem. The

[4] The verdict forms themselves suggest a basis for any apparent inconsistency between the mayhem verdict and the special allegation findings. The forms for both the great bodily injury allegation and for the lesser included allegation refer to "Comatose/Brain Injury." In her closing argument, the prosecutor stated, "We have a special allegation of personal infliction of great bodily injury on Roy Powell that caused him to be comatose due to brain injury. Now as a note that's a lesser-included special allegation you heard about. It's regular great bodily injury, which doesn't include coma or doesn't require a coma." The injury she pointed to in arguing for mayhem was the slit to Roy Powell's ear. In rejecting the comatose/brain injury special allegation, the jury might well have concluded that the injury to the ear did not cause Roy's brain injury, and it could have been under the impression that the injury at issue in the lesser included great bodily injury enhancement was also the brain injury, although it did not require a comatose state.

instruction mirrored the statutory language, and no further explanation was necessary to inform the jury of the nature of the charge. (See *Santana, supra,* 56 Cal.4th at p. 1010 [Legislature established injury's requisite level of seriousness by delineating types of injuries that suffice for mayhem]; see also *People v. Montoya* (1994) 7 Cal.4th 1027, 1047–1048 [trial court must instruct sua sponte on general principles of law necessary for jury's understanding of the case].)

III. DISPOSITION

The judgment is affirmed.

_____
Tucher, J.

We concur:

_____
Pollak, P.J.

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Streeter, J.